

measure in the more than a year since the House barely passed it? Well, I will point back to another surprisingly candid interview. According to one Democratic Senator: "If it is after the election, it may well be that some members feel free and liberated." Let me read that again. "If it is after the election, it may well be that some members are free and liberated."

Free and liberated, you ask. Well, the answer is as obvious as it is chilling. The plan to do cap and trade in a lame-duck is premised on Senators and House Members being free and liberated from the tethers of the American people. That is extraordinary, and it is deeply troubling. But it gets worse because the plan is not simply to wait until after the election. The plan is to add cap and trade in conference or attach it to some other legislation from the House, even though the Senate will not have considered, debated or approved a cap-and-trade bill. Stunning.

Again, do not take my word for it. You can read it in the various news reports. For example, on June 16, Politico reported that the Senate legislative plan for passing cap and trade is to: "... conference the new Senate (Energy) bill with the already-passed House bill in a lame-duck session after the election, so House Members don't have to take another tough vote ahead of midterms."

On June 28, Energy and Environment Daily reported that House Democratic leadership: "... acknowledged that lawmakers on the conference committee may wind up merging the House cap-and-trade plan with a Senate bill that does not include it."

On June 30, the Hill newspaper reported: "House Energy and Commerce Committee Chairman HENRY WAXMAN (D-Calif.) said he would 'absolutely' seek to keep greenhouse gas limits alive in a House-Senate conference if the Senate approves energy legislation this summer that omits carbon provisions."

So the not-so-secret plan is not secret at all. In fact, it is very transparent and clear: Pass an energy bill, any energy bill, pass it out of the Senate so it can be conferenced with the House cap-and-trade bill after the election. My legislation directly addresses this plan in a very concise way. It simply says, if the Senate has not previously approved cap-and-trade legislation, and you try to slip it into law during a lameduck session, then a point of order will lie against the legislation. However, if the Senate has already approved a cap-and-trade bill under regular order, then my amendment would not be triggered.

My amendment, therefore, preserves the opportunity for the Senate to debate this critically important issue. It takes the debate out of the shadows and the back rooms and the conferences onto the Senate floor, in full view of the American people, and it permits the American people to see what is in this bill.

It says, if the Senate has not approved cap and trade, do not slip it in an appropriations bill, do not add it to a defense bill, do not sneak it into another stimulus, and do not hide it in the heaven knows what during a conference committee meeting secretly held who knows where.

I urge my colleagues to look ahead down the road a few months. Members will be here. Maybe they will be "free and liberated" from the will of the American people as one Democratic colleague describes it. The shenanigans are already being forecast. Let's stop it here. I ask for support on this very important legislation.

If debate is intentionally circumvented, our business owners and all Americans will be impacted and hurt. They deserve to know what the debate is going to be about in cap and trade, and my amendment provides this assurance.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

#### DISCLOSE ACT

Mr. CARDIN. Mr. President, I take this time to urge my colleagues to allow us to proceed to the DISCLOSE Act to deal with campaign finance reform. I thank Senator SCHUMER for his hard work on this issue to bring forward a bill that I hope can enjoy sufficient support so we can continue to advance campaign finance reform. Election campaign finance reform is difficult to pass in this body for many reasons. First, it requires bipartisanship. We know that. We know we need to bring together Democrats and Republicans to say: Our legacy on fair elections is more important than our own individual elections, and we have a responsibility to the American public to deal with a growing problem in American politics; that is, the influence of money, particularly during election time.

That is why we celebrated in 2002 with passage of a bipartisan campaign reform act. Under the leadership of Senator MCCAIN and Senator FEINGOLD, we were able to come together, Democrats and Republicans, and advance campaign finance reform to reduce somewhat the influence of special interest corporate money in our political system and to add further disclosures so the American public could know who is trying to influence their vote. That is what campaign finance reform is about, to limit corporate money and provide greater disclosure. Democrats and Republicans came together in 2002 to get that done. The protection of our fair election process has now met a new opponent. That is the Supreme Court or, more specifically, five Justices on the Supreme Court, the so-called conservative Justices. They legislated from the bench, reversing precedent, and ruled on the side of corporate interests over the concerns of ordinary Americans. These were the so-called

Justices many of my colleagues look to for judicial restraint. It is not judicial restraint when they legislate from the bench. It is not judicial restraint when they reverse precedent, when they rule on the side of corporate America over ordinary Americans.

Let me quote from Justice Stevens in his comments as they reflect on the decision the Court made:

[E]ssentially, five justices were unhappy with the limited nature of the case before us so they changed the case to give themselves an opportunity to change the law. There were principled, narrow paths that a court that was serious about judicial restraint could have taken.

Justice Stevens goes on to warn, the majority "threatens to undermine the integrity of the elected institutions across the Nation. The path that is taken to reach its outcome will, I fear, do damage to this institution."

Justice Stevens, in his minority opinion, says:

At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

We tried to do something about that in 2002. We passed a law that said corporations cannot directly try to influence elections. Then we set up how they can do so through a transparent way, collectively, through political action committees. But we stopped undisclosed direct corporate influence in American elections. Now the Supreme Court has reversed that bipartisan action. So how should we in Congress respond? What options do we have? We could amend the Constitution, but that is a matter that requires a great deal more deliberation. I am concerned about amending provisions in the Constitution. We need to think long and hard before we act. We could do something many of us have talked about for a long time—provide incentives for public financing of campaigns to try to reduce dramatically the amount of private money in our campaigns. Senator DURBIN has been a leader in this effort. I am proud to be a cosponsor. That is a matter that should be given serious review. But we don't have the opportunity to do that today.

Today we do have an opportunity to act as Senator SCHUMER has brought forward the DISCLOSE Act which we all profess we support—disclosure. All of us have said we should be serious about giving the public an opportunity to know who is trying to influence their vote.

The minority leader in the House of Representatives, JOHN BOEHNER, said:

I think what we ought to do is we ought to have full disclosure, full disclosure of all money we raise and how it is spent. And I think that sunlight is the best disinfectant.